

Remarks

Following the above amendments, claims 1-8, 10, 23, and 25 are pending in this application. Claim 8 has been allowed. Claims 9 and 17-19 have been cancelled. Of the pending claims, claim 10 has been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,067,545 to Wolff. Claims 1-7 and 23 have been rejected as being obvious over Wolff.

Applicants hereby affirm the election of the claims of Group I, which include claims 1-8, 10, 17-19, and 23. Claims 11-16, 20-22, and 24 are hereby withdrawn by the Applicants. Claim 25 has been added herein.

A. Claim 10

Claim 10, which is directed to a failover method for a computer system, has been rejected by the examiner as being anticipated by Wolff. Specifically, the examiner has determined that each of the four method steps of claim 10 is disclosed in lines 43-59 of column 29 of Wolff. The entire text of lines 43-59 of column 29 of Wolff is set out below:

The resource rebalancing process is described in detail in the description of FIGS. 10B-D, however briefly and example of what occurs in this process is described next. The server who has master status adds up the volume weights of all existing volumes which in the current case total 7. The master then adds up the total node weight of all available nodes, e.g. servers. On the basis of these two totals, a balanced volume weight is established for each of the available servers. The volume limit for each server is based on the simple calculation which establishes the servers node weight as a percentage of the total of all available servers node weights and multiplies that times the sum of all volume weights. ((Node Weight/Total Node Weight)*Total Volume Weight.) The resultants number greater than 1 is the volume limit for that server. As each volume is assigned to a server, its volume weight is added to the total weight of all volumes assigned to this server and compared to the limit.

(column 29, lines 43-59). The foregoing disclosure in Wolff does not disclose or even suggest each element of claim 10. Specifically, there is no mention in the passage of the step of claim 10 of "ordering said at least three nodes according to their respective increasing weights from lowest to highest." This step is nowhere shown in the passage. In addition, there is no disclosure or suggestion in the passage of the step of "creating a queue containing said ordered nodes" This step is not suggested by the passage in any manner. Finally, there is no mention in the passage of Wolff of the assignment step of claim 10, which provides for "assigning said first surviving node in said queue as a failover node" This step is simply not present in the quoted passage.

Because Williams does not disclose each element of claim 10, a rejection of these claims on anticipation grounds is improper. "A claim is not anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). "The identical invention must be shown in complete detail as is contained in the . . . claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1336 (Fed. Cir. 1989). With respect to claim 10 of the present application, each and every element of claim 10 is not found in Wolff. Specifically, the ordering step, the creating step, and the assigning step of claim 10 are not disclosed in Wolff. Because the invention of claim 10 is not disclosed in Wolff, the rejection of these claims should be withdrawn, and this claim should be passed to issuance.

B. Claims 1 and 23

Claims 1 and 23 have been rejected under 35 U.S.C. § 103 as being obvious over Woolf. The examiner recognizes, however, that Wolff does not disclose each element of the claims. Specifically, the examiner recognizes that Wolff does not disclose a method in which

applications of the failed node are assigned to a surviving node having the lowest weight. The examiner states only that "it would have been obvious to one of ordinary skill" to modify Wolff. The examiner does not identify any prior art reference or other evidence to support this assertion.

With respect to the rejection of claims 1 and 23 on obviousness grounds, applicants respectfully submit that the examiner has not established a prima facie case of obviousness. First, it is recognized by the examiner that Wolff, standing alone, does not teach or suggest all of the limitations of claims 1 and 23. As such, to establish a prima facie case of obviousness, the examiner must establish that there is a suggestion or motivation to modify Wolff to include within Wolff the limitation of assigning applications of a failed node to a surviving node having the lowest weight. Manual of Patent Examining Procedure 2143.01.

Here, the examiner has supplied the conclusion that "it would have been obvious to one having ordinary skill in the art" to modify Wolff to assign applications of a failed node to a surviving node having the lowest weight. The examiner has provided no evidence or finding of the specific understanding or principle within the knowledge of a person of ordinary skill in the art at the time of the invention that would have supplied the motivation to modify Wolff to include the step of placing a storage location identifier in the memory partition. See MPEP 2143.01. Instead, the examiner has only supplied the conclusion of what the person of ordinary skill would have done without providing us with any indication of the prior art knowledge that would have motivated the person of ordinary skill in the art to make the required modification to Wolff. As provided in MPEP 2143.01, a simple conclusion as to the supposed action of a person of ordinary skill in the art is insufficient to establish a prima facie case of obviousness.

The examiner's reliance on unidentified prior art to provide the motivation to modify Wolff must be supported. See MPEP 2144.03. Here, the examiner has not pointed to prior art knowledge that would provide the person of ordinary skill with the motivation to modify Wolff to include the assignment of applications of the failed node to a surviving node having the lowest weight. Because this prior art knowledge is not unidentified by the examiner, Applicants hereby respectfully traverse the lack of such a showing and request under MPEP 2144.03 that the examiner supply an affidavit or other documentary proof establishing the prior art knowledge that would have motivated a person of ordinary skill in the art to make the required modifications to Wolff to include the assignment of applications of the failed node to the surviving node having the lowest weight. Applicants respectfully submit that the rejection of claims 1 and 23 should be withdrawn and these claims should be passed to issuance.

C. Dependent Claims 2-7

Dependent claims 2-7 will not be discussed individually herein, as each of these claims depends, either directly or indirectly, from an otherwise allowable base claims. Each of claims 2-7 depends from claim 1.

Conclusion

Applicants respectfully submit that the pending claims 1-8, 10, 23, and 25 of the present invention, as amended, are allowable. Applicants respectfully request that the rejection of the pending claims be withdrawn and that these claims be passed to issuance.

Respectfully submitted,



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